



Memorandum

June 11, 2007

TO: Honorable Members of the City Council

FROM: Mayor Jerry Sanders

SUBJECT: Centrum 12 Office Building Update

I want to take this opportunity to update you on some developments regarding the Centrum 12 office building near Montgomery Field.

Public safety has and always will be my first priority. As such, I vigorously support the City's prosecution of the case against Sunroad so that the Centrum 12 office building is reduced in size to 160 feet and no longer poses a danger to the public. It's my job as mayor to consider all options available to the City as the operator of Montgomery Field. One of those options would have taken an increased number of planes over a residential community. In the end, it was my decision not to pursue this approach because I did not want to increase air traffic over a residential community and I also did not want to hurt the City's case against Sunroad.

With that in mind, let me now explain the various factors that went into my decision. On May 18th, I sent a letter to officials at the Federal Aviation Administration (FAA) and the California Department of Transportation; you were copied on this letter. Two of the paragraphs in the letter read as follows:

"I support your findings that the building must be reduced in size so that it is no longer a hazard to public safety. As Ms. (Karen) McDonald (an FAA official) is aware, my staff has put forward a proposal that will reduce the building height to 163 feet with the exception of the mechanical equipment enclosure room which would remain at 180 feet. The equipment enclosure room constitutes 15% of the overall roofline. The proposal also includes working with the FAA to discontinue circling instrument approaches north of the field and allowing aircraft to circle to the south. Additionally, visual course rules would be modified to ensure that aircraft remain well clear of the building. In the long-term, the City would coordinate with the FAA and the developer to fund and install a straight-in instrument approach procedure to Runway 10 Left. All of these changes are designed to de-conflict aircraft operations and the building.

“I would encourage you to consider this proposal, but I also want to make clear that I will support whatever your ultimate judgment is regarding appropriate remedial actions.”

As a result of my letter, members of my staff and an executive on loan to the City from the San Diego Regional Airport Authority, Ted Sexton, met with FAA officials to discuss the various options that would be available to the City.

The FAA told the City’s representatives that it would not support any intrusion into the airspace above 160 feet. It also told our representatives that it would heartily endorse clearing the airspace around the Centrum 12 office building. In order to do this, during times of adverse weather conditions (considered to be only ½ of 1% of all landings), the City would have to make exclusive a landing pattern that would take aircraft south of the field. Albeit rare, an acceptable landing pattern in existence now and only used in adverse weather conditions, exclusively circling aircraft south of the field would increase air traffic over the residential portions of Serra Mesa. (Ninety-nine percent of the time aircraft land “straight in,” approaching the field from the east and landing to the west.) I do not believe that this is an acceptable option. The formalization of this option would also mean that the Centrum 12 office building would no longer pose a hazard to aviation since it would no longer be a part of the approach to Montgomery Field. In my opinion, the exclusive use of a circle south approach would harm the City’s case against Sunroad.

As mayor, it’s my job to consider all options that further the goals of our city and its citizens. In the end, I have decided not to formalize, for exclusive use, a circle south approach. I did not want to increase the air traffic over Serra Mesa and I did not want to harm the City’s court case against Sunroad. The status quo will remain in place, meaning that pilots, in adverse weather (defined as Santa Ana winds from the east with low cloud cover that makes a “straight in” landing from the east difficult) conditions will have the option to circle north or south of the field and land from the west to the east. Should pilots choose to circle north, the FAA has lifted the altitude at which they have to fly from approximately 880 feet to 960 feet.

My decision makes the City Attorney’s prosecution of the case against Sunroad all the more important; I wholeheartedly support the case. I will not be satisfied until the Sunroad building is reduced in height to 160 feet. No one that broke the law should be accommodated and that’s why I did not want to make exclusive a landing pattern – albeit in limited cases – that would weaken the City’s case.

Loaned Executive Program

In late March of this year, the San Diego Regional Airport Authority entered into a services agreement with the City of San Diego to lend the City the services of Authority vice president Ted Sexton for 6 months from April 1 – September 30, 2007. Loaned executives are a best practice in the public sector. The City is receiving Mr. Sexton’s services for free. The City has had 3 loaned executives: one from the County, one from the Port and Mr. Sexton from the Airport Authority. It’s a good thing. We get the services of very competent professionals for free.

As you know, the City owns and operates two airports: Brown and Montgomery Fields. Mr. Sexton was brought on board, in large part, to help the City determine how these airports could be operated more effectively and whether or not the City should be in the airport business at all. Mr. Sexton's responsibilities while at the City are clearly articulated in agreement between the agreement and the City; I have attached a copy of that agreement to this memo. While an integral part of our discussions with the FAA, Mr. Sexton was not brought on board to manage the Sunroad building issue.

Mr. Aguirre has alleged that the service agreement that Admiral Froman signed on behalf of the City with the Airport Authority is "illegal." We wholeheartedly disagree. Mr. Aguirre and I will just have to agree to disagree on this issue. The services agreement does not require the City Attorney's review or approval. Moreover, the City Attorney was aware of the arrangement with the Airport Authority. This issue was discussed at a Rules Committee meeting in early April at which Deputy City Attorney Catherine Bradley was present. No objection was raised at the meeting when the arrangement was discussed and to date my office has not received any correspondence regarding the loaned executive program.

I will keep you apprised of any additional developments on this issue.

Thank you.

cc: City Attorney
Andrea Tevlin, Independent Budget Analyst
Ronne Froman, COO

AGREEMENT
BETWEEN
THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
AND
THE CITY OF SAN DIEGO
FOR EXECUTIVE LOAN OF SERVICES OF
AIRPORT AUTHORITY EMPLOYEE
THEODORE ("TED") C. SEXTON

AGREEMENT NO. _____

THIS AGREEMENT, made and entered into this 31st day of March, 2007, by and between the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government (hereinafter "Authority") and the CITY OF SAN DIEGO, a municipal corporation (hereinafter "City"); and

RECITALS

WHEREAS, the City is conducting a special project to review the management and facility development options of its City-owned airports; and

WHEREAS, the City is preparing modifications to its General Plan that address land use compatibility policies that directly impact the delivery of aviation services to the region; and

WHEREAS, the Authority, is charged by its enabling legislation to plan for facility development and siting opportunities available in the region to support long term aviation demand; and

WHEREAS, the Authority is preparing a comprehensive airport land use plan for the region and developing standards and guidelines for use in adopting an airport land use compatibility plan for airports in the region, including San Diego International Airport and Brown and Montgomery Field Airports, as required by state law; and

WHEREAS, Authority employee Ted Sexton (hereinafter "Employee") has expertise in the area of airport management and development, federal and state regulatory controls, and land use compatibility planning; and

WHEREAS, the Authority has agreed to loan Employee to the City to participate in the City's deliberations on aviation matters, strategy formulation, and regulatory interface to thereby assist the City and the Authority to evaluate their potential options in light of the City's project;

NOW, THEREFORE, in consideration of the recitals, terms, and conditions stated herein, IT IS MUTALLY AGREED AS FOLLOWS:

Sec. 1. Scope of Services. Authority agrees to provide City with the executive loan of the services of Employee, in accordance with "Attachment A, Scope of Services", a copy of which is attached hereto and incorporated herein by this reference.

Sec. 2. Term. This Agreement shall commence on April 1, 2007, and shall terminate on September 30, 2007, subject to earlier termination as provided herein.

Sec. 3. Compensation. Authority shall continue to pay Employee's salary and benefits during the term of this Agreement. City shall reimburse Authority for all out-of-town travel and other incidental and necessary expenses in the performance of Employee's duties for the City, including daily parking fees. City shall provide workspace and equipment for Employee as further described in "Attachment A, Scope of Services". No monetary compensation beyond reimbursement of Employee's expenses shall be provided by the City for services rendered by Employee.

Sec. 4. Records. In accordance with generally accepted accounting principles, City shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection by Authority at all reasonable times in the City of San Diego. Such records shall be maintained and kept for at least three (3) years after the termination of this Agreement, the completion of services to be performed under this Agreement, or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

City understands and agrees that Authority, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which City or anyone else associated with the work has prepared or which relate to the services described in Attachment A" pursuant to this Agreement, regardless of whether such records have previously been provided to Authority. City shall provide Authority at City's expense a copy of all such records within five (5) working days of a written request by Authority. Authority shall also have the right to inspect at reasonable times the City's office or facilities, at which location Employee is engaged in the performance of services pursuant to this Agreement. City shall, at no cost to Authority, furnish reasonable facilities and assistance for such review and audit.

Sec. 5. Sub-consultants and Subcontractors. No sub-consultants or subcontractors are authorized under this Agreement.

Sec. 6. Compliance. In performance of this Agreement, City shall comply with the California Fair Employment and Housing Act ("FEHA"), the Americans with Disabilities Act ("ADA"), and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. City shall comply with the prevailing wage provisions of the California Labor Code, the Political Reform Act provisions of the California Government Code, as applicable, as well as all applicable federal and state laws.

Sec. 7. Assignments. City shall not assign or transfer, directly or indirectly, voluntarily or involuntarily, any of its rights, duties, or obligations under this Agreement, in whole or in part, without the express prior written consent of the Authority's President/CEO. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without consent, shall be void and of no effect.

Sec. 9. Insurance Requirements. The Authority understands that the City is a self-insured municipal agency.

Sec. 10. Independent Review. Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

Sec. 11. Integration and Modification. This Agreement contains the entire agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and properly executed by the parties hereto.

Sec. 12. Ownership of Records. Any and all materials and documents, including without limitation, drawings, specifications, computations, designs, plans, investigations and reports, prepared by Employee pursuant to this Agreement, shall be the property of City from the moment of their preparation and the Employee shall deliver such materials and documents to City whenever requested to do so by City. However, Employee shall have the right to make duplicate copies of such materials and documents for his own file, or for other purposes as may be expressly authorized in writing by City. Said materials and documents prepared or acquired by Employee pursuant to this Agreement (including any duplicate copies kept by the Employee) shall not be shown to any other public or private person or entity, except the Authority as authorized by City. Employee shall not disclose to any other public or private person or entity any information regarding the activities of Employee, except as expressly authorized in writing by City or Authority. The parties recognize the California Public Records Act may apply to and govern the rights and obligations expressed in this section. Notwithstanding the provisions of this section, each party acknowledges it must fully and legally comply with the applicable provisions of said Act.

Sec. 13. Termination. In addition to any other rights and remedies allowed by law, the President/CEO of the Authority or the Chief Operating Officer of the City may terminate this Agreement at any time with or without cause by five days prior written notice to City of such termination and specifying the effective date thereof. In the event of termination, all finished or unfinished documents and other materials shall be delivered to City.

Sec. 14. Dispute Resolution. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed upon, and if such dispute is not otherwise time barred, the parties agree prior to initiating any litigation or arbitration to first try in good faith to settle the dispute amicably by mediation conducted in the City of San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant agreements or resolutions shall be documented and may be used as the basis for an amendment or directive as appropriate.

If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration conducted in the City of San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the arbitration award shall be non-binding and advisory only. Any resultant agreement or resolution shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or either party to this Agreement, both parties to this Agreement agree to join in and become parties to the arbitration proceeding.

The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of this Agreement and the California Government Code shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the Authority

Clerk, the Government Code, or otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

Sec. 15. Captions. The captions by which the paragraphs or sections of this Agreement are identified are for the convenience of the parties only and shall have no effect upon its interpretation.

Sec. 16. Required Signatures. It is an express condition of this Agreement that it shall not be complete, binding or effective until signed by the President/CEO or an authorized designee on behalf of the Authority and by authorized representative of the City.

Sec. 17. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally, (b) by overnight courier upon written verification of receipt, or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing:

If to the Authority:

Thella F. Bowens, President/CEO
San Diego County Regional Airport Authority
P.O. 82776
San Diego, CA 92138-2776
Tel.: (619) 400-2444; FAX: (619) 400-2448

If to the City:

Ronne Froman, Chief Operating Office
City of San Diego City Administration Building
202 C St., 11th Floor
San Diego, CA 921 01
Tel.: (619) 236-6330; Fax: (619) 236-7153

Sec. 18. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, CITY and Authority have caused this Agreement to be executed by their authorized representatives, all as of the day and year first hereinabove written.

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San Diego County Regional Airport Authority

Signature: Tella F. Bowens

Print Name: TELLA F. BOWENS

Approved as to Legal Form:

By: Donald H. Felt
Office of the General Counsel

City of San Diego

Signature: Ronne Froman

Print Name: RONNE FROMAN

ATTACHMENT A - SCOPE OF SERVICES

The City and the Authority agree to an executive loan of the services of Employee for the following scope of services:

- assist the City on its special project and the Authority in developing land use compatibility plans for city owned airports and SDIA;
- assist a team of City employees to conduct a thorough review of the management and facility development options for City-owned airports;
- coordinate with City staff to assist on effective and beneficial resolutions of issues related to the management and development of City airports;
- contribute to the final preparation of the City's General Plan as it relates to airports, airport land use plans, and other aviation issues;
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- work with City finance staff to provide assistance in reviewing FAA grants, grant sponsorships and compliance with grant assurances;
- provide planning assistance in the review of the development proposals solicited by the City for Brown Field Airport;
- Assist in building community partnerships with key stakeholders and communities surrounding Brown and Montgomery Field Airports, as required;
- work jointly to develop comprehensive business plans for Brown and Montgomery Field with milestones identifying key business development decisions;
- work with City staff to identify issues relating to the FAA and Caltrans to facilitate increased communication and problem-solving between these and other agencies;
- make recommendations, as necessary, that would improve communication in developing useable land use compatibility standards for urban sited airports
- facilitate the development of optimal land use compatibility planning policies for the City owned airports and for the Authority's use in planning for improvements at SDIA;
- Make recommendations to both organizations in furtherance of the completion of Airport Land Use Plans for SDIA and Brown and Montgomery Field Airports and in preparation of the Authority's comprehensive airport land use plan for the region;
- help define and design a partnership between the City and Authority to meet the City's and the Authority's near term goals (within six months to one year) with continuing liaison offered for the long term;
- work out of an office in the City Administration Building using City-owned office equipment, including a computer and telephone; and
- Attend Authority Board meetings and senior staff meetings as designated by the President/CEO of the Authority.